THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.977 of 2002

ORDER:

This writ petition is filed seeking a Mandamus declaring the order of the third respondent passed in O.A.No.95 of 1997 dated 11.7.2000 confirming the order of the second respondent in Rc.No.5466/81.D dated 24.4.1991 as arbitrary and illegal.

It is the case of the petitioner that while he was the Honorary Secretary of the first respondent society, an enquiry was ordered under Section 51 of the A.P. Cooperative Societies Act to enquire into the affairs of the first respondent society. The Enquiry Officer submitted his report pointing out certain irregularities. Based on the said report, surcharge notices were issued to the petitioner and the Ex-President and other Directors of the society under Section 60(1) of the APCS Act on 27.11.1985 and they were asked to submit explanation for causing deficiency to the assets of the Society and they have submitted a detailed explanation. The second respondent vide order dated 24.4.1991 ordered the petitioner to pay an amount of Rs.15,810.15 with further interest at 15% per annum by way of compensation to the assets of the society from 30.5.1985 till the date of realization. Aggrieved by the same, petitioner filed O.A.No.95 of 1997 before the third respondent-A.P. Cooperative Tribunal, Vijayawada. The third respondent by order dated 11.7.2000 upheld the order of the second respondent dated 24.4.1991 and dismissed the appeal. Aggrieved by the same, the present writ petition is filed.

The learned counsel for petitioner strenuously contended that the Tribunal has not properly appreciated the evidence on record on certain items, such as, the remuneration paid to the petitioner was

covered by the resolution passed by the Committee, but that was not taken into consideration and apart from that, fixing of 15% interest from 30.5.1985 till the date of realization, is arbitrary and illegal, since as of now, the banking rate is only 6% for the deposits made by citizens.

Per contra, the learned counsel for respondents contended that these are all pure questions of facts and they cannot be adjudicated in a petition filed under Article 226 of the Constitution of India and no ground is made out to interfere with the impugned proceedings and therefore, the writ petition is liable to be dismissed.

I have perused the impugned order and other material made available on record.

The contention that the Tribunal has not properly appreciated the evidence cannot be gone into unless it is brought to the notice of the Court that the findings arrived at are contrary to the evidence or perverse. Therefore, no interference can be made on that ground. However, the learned counsel for petitioner states that fixing of 15% interest is on the higher side and if the petitioner is directed to pay the amount at the said rate from 30.5.1985 till the date of realization, it will be more than three times of the principal amount sought to be recovered from him, therefore, the same is liable to be reduced. The learned counsel also contends that the petitioner is more than 75 years old and is a pensioner getting a meager pension and is not keeping good health.

Taking all these into consideration and having regard to the facts and circumstances of the case, I am of the opinion that fixing of interest @ 15% per annum is on higher side compared to the present banking rate of interest. In view of the same, I deem it appropriate to reduce the interest from 15% to 8% per annum on the principal amount payable by the petitioner. Except this modification, the rest of the

impugned order passed by the Tribunal is confirmed.

The writ petition is accordingly disposed of. No order as to costs.

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C.V.RAMULU, J

Date: 30.6.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.977 of 2002

30.6.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.977 of 2002

Dated: 30th June, 2006

Between:

R.V.Subba Rao

.. Petitioner

and

Eluru Central Excise Cooperative Building Society, Satrampardu, Eluru, West Godvari district, rep. by its President & others.

.. Respondents